

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

ANTONIO LOPEZ, *on behalf of himself
and all others similarly situated,*

Plaintiff,

v.

ADELPHI UNIVERSITY,

Defendant.

Case No.

**CLASS ACTION COMPLAINT
AND DEMAND FOR JURY
TRIAL**

Plaintiff Antonio Lopez (“Plaintiff”), by and through his undersigned counsel, brings this Class Action Complaint against Defendant Adelphi University (“Adelphi” or “Defendant”), and alleges as follows based upon information and belief, except as to the allegations specifically pertaining to him, which are based on personal knowledge.

NATURE OF THE ACTION

1. Higher education is no different from any other industry in as much as consumers (*i.e.*, students) have the ability to shop between different educational products offered by competitive institutions before ultimately purchasing the product that is right for them.

2. Some colleges and universities offer an educational product without access to a campus or in-person community, while others offer an educational

product with access to a varied suite of services, activities, facilities and experiences through an on-campus, in-person educational experience.

3. Adelphi primarily offers students an in-person educational experience featuring traditional, face-to-face lectures and laboratory courses, and offers a limited selection of courses and degree programs in online-only formats.

4. Plaintiff, an undergraduate student during the Spring 2020 semester, paid tuition and fees to enroll in Adelphi's on-campus, in-person education program, including all the benefits and services associated therewith for the entirety of the Spring 2020 semester.

5. Plaintiff's paid-for experience was cut short midway through the Spring 2020 semester, when that in-person educational experience was taken away from Plaintiff and other students at Adelphi.

6. In March 2020, in response to the outbreak of the SARS-CoV-2 virus, the virus that causes the COVID-19 disease (the "COVID-19 pandemic"), Adelphi, like many other colleges and universities, transitioned to remote online-only education, canceled on-campus recreational events, canceled student activity events, and ordered students to refrain from going on campus.

7. As a result, all on-campus education, services, and amenities were no longer available to Adelphi students for the remainder of the Spring 2020 semester.

8. Despite the harsh reality that students could no longer enjoy the benefit

of the bargain for which they pre-paid, Adelphi refused to provide a prorated refund of tuition or fees tied to its on-campus education, services, and amenities that were not available to students for a significant part of the Spring 2020 semester.

9. Accordingly, Adelphi's students lost the benefits of the bargain for services and the experience they paid for but could no longer access or use following the school's transition to remote learning in March 2020.

10. By not giving prorated refunds for tuition or fees charged for on-campus education and services not provided, Adelphi breached its contracts with its students or was otherwise unjustly enriched.

11. It cannot be disputed that the circumstances underlying this legal action are unfortunate and unprecedented. However, the students did not choose these circumstances, and they certainly did not agree to pay tuition and fees for online-only education and services.

12. It is unfair and unlawful for Adelphi to retain tuition and fees for campus-based in-person education and services not being provided and to pass the financial losses on to its students.

13. Importantly, Plaintiff does not challenge Defendant's discretion in adhering to federal, state, and local health guidelines, but rather challenges Adelphi's decision to retain the tuition and fees, paid by Plaintiff and other students for in-person education, experiences, access to campus, and services, without providing

such for the entire duration of the Spring 2020 semester.

14. Plaintiff brings this class action for damages and restitution resulting from Adelphi's retention of the tuition and fees paid by Plaintiff and the other putative Class members for in-person education and services not being provided. Specifically, this lawsuit seeks disgorgement of the prorated, unused amounts of the fees that Plaintiff and other putative Class members paid, but for which they (or the students on behalf of whom they paid) were not provided the benefit, as well as a partial prorated tuition reimbursement representing the difference in fair market value between the on-campus product for which they had paid, and the online product that they received.

PARTIES

15. Plaintiff, Antonio Lopez, is an adult, who at all relevant times, is a resident and citizen of the State of New York. He paid tuition and fees for the Spring 2020 semester. Halfway through the Spring 2020 semester, Plaintiff was forced to take his classes remotely, refrain from visiting campus, and prevented from utilizing various on-campus services for which he paid.

16. Plaintiff was an undergraduate student enrolled at Adelphi for the Spring 2020 semester, which was scheduled to run from approximately January 23, 2020 to May 18, 2020. Plaintiff did not have access to the campus after mid-March 2020 because the campus was closed due to the COVID-19 pandemic. Plaintiff paid

tuition and fees for an in-person educational experience during the Spring 2020 semester, the benefits of which he lost because Adelphi closed the campus and cut off access to on-campus services, facilities, and extracurricular activities.

17. Defendant, Adelphi, is a private university founded in 1896. Adelphi offers dozens of undergraduate and graduate degrees and enrolls students from approximately 40 states and dozens of foreign countries. Adelphi's main campus is located in the village of Garden City, Nassau County, New York. Adelphi also operates campuses in the state of New York at Hauppauge, Suffolk County; Brooklyn, Kings County; Poughkeepsie, Dutchess County; and Middletown, Orange County. Defendant is a citizen of New York.

JURISDICTION AND VENUE

18. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A), as modified by the Class Action Fairness Act of 2005, because at least one member of the Class, as defined below, is a citizen of a different state than Defendant, there are more than 100 members of the Class, and the aggregate amount in controversy exceeds \$5,000,000 exclusive of interests and costs.

19. This Court has personal jurisdiction over Defendant because Defendant resides in this District, many of the acts and transactions giving rise to this action occurred in this District, and because Defendant conducts substantial business by

operating its principal campus in this District and soliciting students residing in this District to attend its institution.

20. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Defendant resides in this District, and many of the acts and transactions giving rise to this action occurred in this District, specifically, the contracts that are the subject of this action were formed in this District, and the performance and breach of contract also occurred in this District.

FACTUAL ALLEGATIONS.

21. Prior to the COVID-19 pandemic, Adelphi had a longstanding tradition of offering most of its courses in face-to-face classroom settings on campus. In accordance with this prior course of conduct, Adelphi scheduled the vast majority of its Spring 2020 courses to be in-person and on-campus.

22. During registration for Spring 2020 courses, Adelphi's online course enrollment system offered students the opportunity to filter the directory of classes based on instructional modes.¹ Students could fine-tune their course search by specifying "Traditional courses (0-29% of content is online)," "Blended courses (30-79% of content is online)," "Online courses (80-99% of content is online)," and/or "Online courses (100% of content is online)."² Therefore, when enrolling in classes

¹ See *Course Search*, Adelphi University, <https://web.archive.org/web/20200408132805/https://search.adelphi.edu/course-search/> (captured Apr. 8, 2020) (last visited Sep. 19, 2023).

² *Id.*

for the Spring 2020 semester, Adelphi students made informed choices about whether to spend their tuition dollars on in-person or online modes of course delivery.

23. To enroll in classes, Adelphi students are required to pay tuition and some form of mandatory fees. The Spring 2020 semester was scheduled to commence on or about January 23, 2020, and end on or around May 18, 2020.³

24. Tuition for the Spring 2020 semester was \$20,155 for full-time undergraduate students and between \$18,465 and \$25,620 for full-time graduate students.⁴

25. In contrast, Adelphi's online-only degree programs are significantly cheaper for students. For example, tuition for an undergraduate student taking a full-time course load is \$6,420 for Adelphi's online-only B.A. program in Social Science⁵ and \$5,700 for Adelphi's online-only B.A. program in Liberal Studies.⁶

26. Therefore, Adelphi charges a significant premium for students to enroll in traditional, face-to-face courses instead of online degree programs.

³ *Academic Calendar*, Adelphi University 2019-2020 University Bulletin, <https://catalog.adelphi.edu/content.php?catoid=11&navoid=545> (last visited Sep. 19, 2023).

⁴ *Expenses and Financial Aid*, Adelphi University 2019-2020 University Bulletin, <https://catalog.adelphi.edu/content.php?catoid=11&navoid=551> (last visited Sept. 19, 2023).

⁵ *Undergraduate Programs: Social Science*, Adelphi University, <https://www.adelphi.edu/program/undergraduate/social-science> (last visited Sep. 19, 2023) (describing tuition as \$535 per credit).

⁶ *Online Bachelor of Arts in Liberal Studies*, Adelphi University, <https://onlineprograms.adelphi.edu/programs/ba-bachelor-liberal-studies> (last visited Sep. 19, 2023) (describing tuition as \$475 per credit).

27. Adelphi uses its marketing materials, course catalog, and other bulletins to solicit students for its in-person, on-campus educational programs.

28. Adelphi highlights in-person interaction with faculty as a core benefit of enrollment at the university. Adelphi describes these interactions as a “personalized learning” approach where “students learn best with professors who are personally interested in their lives and future goals.”⁷

29. Similarly, Adelphi’s “A Life Transformed” series of YouTube videos, including those targeted toward prospective students entering for the 2019-2020 academic year, consistently emphasized that Adelphi students could expect small class sizes and close collaboration with professors. These videos represented to students that:

- a. “With small class environments, I really like the idea that there’s just a lot of discussion. You also get really close to your professors.”⁸
- b. “[Professors] really pride ourselves on having open doors and fostering an environment where students feel comfortable to come and chat with us about everything.”⁹

⁷ *Our Personalized Approach to Learning—Explained by a Professor of Psychology*, News at Adelphi (Mar. 4, 2020), <https://www.adelphi.edu/news/our-personalized-approach-to-learning-explained-by-a-professor-of-psychology/>

⁸ *A Life Transformed at Adelphi: Deirdre’s Story*, YouTube (Feb. 8, 2019), <https://www.youtube.com/watch?v=ADa-Tv6nuOk> at 1:30-1:39.

⁹ *A Life Transformed at Adelphi: Antonette’s Story*, YouTube (May 1, 2019), https://www.youtube.com/watch?v=kx_Dd7BF774 at 1:18-1:28.

c. “It was really important to me to find a small classroom environment . . . what I found was that it meant getting to know professors outside the classroom.”¹⁰

30. Adelphi emphasizes to students that a “full college experience” also includes “a broad range of cocurricular activities” offered through Adelphi’s Center for Student Involvement.¹¹ Adelphi highlights that it has more than 80 student clubs and organizations, including leadership groups, student government, cultural diversity groups, community service clubs, religious organizations, and more.¹²

31. Adelphi promotes “wide-ranging” arts and events on campus as a benefit of enrollment, including “performing arts—dance, theatre, and music—as well as a lecture series, an art series and an ambassador series.”¹³

32. As another benefit of in-person enrollment, Adelphi highlights its physical recreation offerings, including a “vigorous intramural program” and “self-selected recreational activities” such as “swimming, running, tennis . . . zumba, pilates, spin class, and use of the Fitness Center.”¹⁴

¹⁰ *A Life Transformed at Adelphi: Nicole’s Story*, YouTube (May 16, 2019), <https://www.youtube.com/watch?v=ADa-Tv6nuOk> at 0:09-0:14.

¹¹ *Cocurricular and Student Life*, Adelphi University 2019-2020 University Bulletin, <https://catalog.adelphi.edu/content.php?catoid=11&navoid=549> (last visited Sept. 19, 2023).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

33. Adelphi emphasizes that it has “invested millions of dollars in infrastructure” to create extensive on-campus spaces and resources for students’ benefit.¹⁵ These resources include:

- a. The Swirbul Library, which featured a variety of physical spaces available to students, including collaboration studios equipped with enhanced technology for group study, an information commons with computer workstations, printers, and scanners, designated quiet spaces for individual study, and after-hours spaces that remain open 24 hours a day during finals week;¹⁶
- b. Laboratory spaces and equipment, including “state-of-the-art lasers for two new physics laboratories, an atomic scanning microscope and a nuclear magnetic resonance machine for the chemistry program,”¹⁷
- c. Recreational facilities such as The Center for Recreation and Sports, “containing gyms and an indoor track;” Woodruff Hall,

¹⁵ *An Adelphi Education*, Adelphi University 2019-2020 University Bulletin, <https://catalog.adelphi.edu/content.php?catoid=11&navoid=546> (last visited Sept. 19, 2023).

¹⁶ *Garden City – Swirbul Library: Rooms and Spaces*, Adelphi University, <https://web.archive.org/web/20200115160441/https://libguides.adelphi.edu/roomsandspace> (captured Jan. 15, 2020).

¹⁷ *An Adelphi Education*, Adelphi University 2019-2020 University Bulletin, <https://catalog.adelphi.edu/content.php?catoid=11&navoid=546> (last visited Sept. 19, 2023).

a recreation center with “a modern exercise room, pool and teaching gym and classroom,” and an outdoor sports complex;¹⁸

- d. Performing arts facilities and equipment, including a 500-seat concert hall, “performance, rehearsal and classroom space for music, theatre and dance,” “new pianos from Steinway & Sons, and enhanced digital music facilities to support our music and performing arts programs;”¹⁹
- e. The Adele and Herbert J. Klapper Center for Fine Arts, “which provides space for painting, printmaking, sculpture, and ceramics”²⁰ and;
- f. The Learning Center, a location where students can access content-specific or general tutoring support.²¹

34. Moreover, Adelphi promotes the location of its campus as a compelling reason for students to decide to attend. Adelphi’s description of its cultural and campus life, in fact, *begins* by emphasizing its proximity to New York City:

“Less than an hour away from our Garden City campus lies the nation’s foremost center of art, industry, communications and intellect—New York City. Students at Adelphi enjoy excursions to New York, including trips to the theatre and concert performances, visits to

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Support Services and Resources*, Adelphi University 2019-2020 University Bulletin, <https://catalog.adelphi.edu/content.php?catoid=11&navoid=547> (last visited Sept. 19, 2023).

museums and gallery exhibitions, and informed tours of national centers of scientific research, government, and finance.”²²

35. Plaintiff and members of the Class paid their tuition in the Spring 2020 semester to enjoy everything Adelphi offered them, including on-campus resources, campus community, and in-person education throughout the entire Spring 2020 semester.

36. When enrolling in classes for the Spring 2020 semester, Plaintiff and members of the Class chose to enroll in classes offered in-person, to obtain the benefits outlined above.

37. Plaintiff and members of the Class were also required to pay a mandatory University Fee, Technology Fee, Student Activity Fee, and Library Fee (collectively, the “Mandatory Fee”) for the Spring 2020 semester. The Mandatory Fee totaled \$488 for full-time undergraduate students and \$750 for full-time graduate students during the Spring 2020 semester.²³

38. The University Fee “cover[s] the use of all academic and recreational facilities and services including the Center for Recreation and Sports, the Health Service Center, counseling and career services, and provides for security, including shuttle transportation services and accident insurance for all students.”²⁴

²² *Cocurricular and Student Life*, *supra* note 8. Adelphi University 2019-2020 University Bulletin, <https://catalog.adelphi.edu/content.php?catoid=11&navoid=549> (last visited Sept. 19, 2023).

²³ *Expenses and Financial Aid*, Adelphi University 2019-2020 University Bulletin, <https://catalog.adelphi.edu/content.php?catoid=11&navoid=551> (last visited Sept. 19, 2023).

²⁴ *Id.*

39. The Technology Fee “is used to maintain a wireless campus, provide web and eCampus services, allow students access to hundreds of PC’s and Macs across campus, as well as the latest smart technology in classrooms.”²⁵

40. Plaintiff and the members of the Class paid the Mandatory Fee for the Spring 2020 semester so they could benefit from on-campus services and facilities offered by Adelphi to its students.

41. Despite Plaintiff and Class members paying Spring 2020 semester tuition and the Mandatory Fee to attend Adelphi for an in-person and on-campus educational experience, Adelphi failed to provide the promised in-person education for the duration of the entire Spring 2020 semester, instead providing only online instruction for more than half of the Spring 2020 semester.

A. In Response to COVID-19, Adelphi Closed Campus, Preventing Access to its Facilities, Services, Housing, and Dining, and Cancelled All In-Person Classes.

42. On Tuesday, March 10, 2020, Adelphi announced the suspension of cancel in-person classes until further notice.²⁶ Classes scheduled from Wednesday, March 11, 2020 through Sunday, March 22, 2020 were cancelled entirely, while classes scheduled on or after Monday, March 23, 2020 were moved to online-only

²⁵ *Id.*

²⁶ *COVID-19 Update: Canceling Classes at Adelphi University Out of an Abundance of Caution*, News at Adelphi (Mar. 10, 2020), <https://www.adelphi.edu/news/covid19-canceling-classes-at-adelphi>.

instructional formats.²⁷ Six days later, on March 16, 2020, Adelphi extended this suspension through the remainder of Spring 2020 semester.²⁸

43. On March 16, 2020, Adelphi required all residential students to move out and return home “as soon as possible.”²⁹ Only students with travel restrictions or “extreme” circumstances or hardships could receive an exception to remain on-campus.³⁰

44. On or around March 16, 2020 Adelphi shifted to a remote workforce and allowed only essential employees on campus.³¹ Consequently, Adelphi closed most of its campus facilities to students, including campus libraries³² and fitness centers,³³ and cancelled in-person events.

45. On March 20, 2020, Adelphi cancelled its in-person Spring 2020 commencement ceremonies.³⁴

²⁷ *Id.*

²⁸ *Online Learning to Continue Through the End of the Spring Semester*, News at Adelphi (Mar. 16, 2020), <https://www.adelphi.edu/news/online-learning-to-continue-through-the-end-of-the-spring-semester-03-16-20>.

²⁹ *Coronavirus Update: Urgent Notice to Residents*, News at Adelphi (Mar. 16, 2020), <https://www.adelphi.edu/news/coronavirus-update-urgent-notice-to-residents-3-16-2020>.

³⁰ *Id.*

³¹ *Coronavirus Updates: Adelphi’s Shift to a Remote Workforce*, News at Adelphi (Mar. 15, 2020), <https://www.adelphi.edu/news/coronavirus-update-adelphis-shift-to-a-remote-workforce>.

³² *Libraries*, Adelphi University, <https://web.archive.org/web/20200324124703/https://libraries.adelphi.edu> (captured Mar. 24, 2020) (stating that “campus library buildings are closed”)

³³ *Hours for Adelphi’s Recreation Facilities*, Adelphi University, <https://web.archive.org/web/20200424152354/https://recreation.adelphi.edu/facilities/hours> (captured Apr. 24, 2020) (describing that facilities “are CLOSED until further notice”)

³⁴ *Coronavirus Updates: Commencement 2020*, News at Adelphi (Mar. 20, 2020), <https://www.adelphi.edu/news/coronavirus-updates-commencement-2020-3-20-2020>.

46. Adelphi did not hold any in-person classes for undergraduate students between March 11, 2020 and the end of Spring 2020 term. All Spring 2020 classes after March 10, 2020 were only offered in a remote, online format with no in-person instruction or interaction.

47. Most of the services for which the Mandatory Fee was assessed were terminated, cancelled, or severely curtailed at or about this time, such as access to the health and wellness facilities, programs or services; fitness facilities; student events or sports; and an in-person commencement.

48. Adelphi's decisions to implement online-only instruction and to close campus created significant and unexpected changes to students' educational experiences, as Adelphi's president admitted on March 13, 2020 when she told students:

“You are probably wondering about . . . what your classes will look like in an online format—especially labs, performance, art and others. Most of our resident students have returned home unexpectedly and are now wondering when they will be able to return to their home away from home. . . . For so many of you the experiences you all worked hard for and planned this semester have been canceled or postponed. I know all these developments have upended your expectations for Spring 2020.”³⁵

³⁵ *COVID-19 Update: A Message from President Riordan*, News at Adelphi (Mar. 13, 2020), <https://www.adelphi.edu/news/covid-19-update-a-message-from-president-riordan-3-13-2020>.

49. Adelphi's decisions to implement online-only instruction and to close campus deprived students of academic and interpersonal experiences they bargained for, as Adelphi's provost admitted on March 23, 2020 when he wrote that:

"Our students are sacrificing the social and interpersonal connections they deserved to expect in their college experiences [and] our faculty are completely reimagining their coursework. . ." ³⁶

50. Despite Adelphi's acknowledgement that its decisions required faculty to completely reimagine coursework, compelled students to sacrifice interpersonal connections, and consequently upended students' deserved expectations for Spring 2020, Adelphi refused to give refunds or reimbursements of tuition or fees. ³⁷

B. Students Experienced Significant Losses, in Many Cases of Borrowed Funds as a Result of Adelphi's Conduct.

51. At Adelphi, the median federal loan debt among borrowers who completed their undergraduate degree is \$25,000. ³⁸ The median monthly federal loan payment (if it were repaid over 10 years at 5.05% interest) for federal student loan borrowers who graduated from Adelphi is \$265. ³⁹

³⁶ *Welcome to Our New Reality*, News at Adelphi (Mar. 23, 2020), <https://www.adelphi.edu/news/welcome-back-3-23-2020/>.

³⁷ *Frequently Asked Questions About the Coronavirus: University Operations, Events, and Resources*, Adelphi University, <https://web.archive.org/web/20200427144359/https://health.adelphi.edu/coronavirus-information> (captured Apr. 27, 2020).

³⁸ *Adelphi University Tuition & Financial Aid*, U.S. News, <https://www.usnews.com/best-colleges/adelphi-university-2666/paying> (last visited Sept. 19, 2023).

³⁹ *Id.*

52. In addition, 12% of graduating students at Adelphi took out private loans.⁴⁰ Students with private loans had an average of \$34,421 in private loan debt at graduation.⁴¹

53. With the campus shut down for more than half of the semester, Plaintiff and the proposed Class have been deprived of the benefits of the on-campus educational experience as set forth above. Nevertheless, Adelphi has refused to refund any portion of tuition or the Mandatory Fee, despite not providing the on-campus educational experience for which students paid.

54. Students attending Adelphi's Spring 2020 semester did not choose to attend an online institution of higher learning, but instead chose to enroll in Adelphi's in-person, on campus educational program.

55. During the online portion of the Spring 2020 semester, Adelphi principally used programs by which previously recorded lectures were posted online for students to view on their own, or by virtual Zoom meetings. Therefore, there was a lack of classroom interaction between students and professors and among students that is instrumental in interpersonal skill development.

56. The online formats used by Adelphi did not require memorization or the development of strong study skills given the absence of any possibility of being

⁴⁰ *Id.*

⁴¹ *Id.*

called on in class and the ability to consult books and other materials when taking exams.

57. Students were deprived of the opportunity for hands-on, collaborative learning and in-person dialogue, feedback, and critique.

58. Access to facilities such as libraries, laboratories, computer labs, and study rooms, integral to a university education, and access to the myriad activities offered by campus life that foster social development, leadership, wellness, independence, and networking for future careers, are all substantial and material parts of the basis upon which Adelphi can charge the tuition it charges. Contrary to Adelphi's promises, these services and facilities were not provided.

59. Adelphi has not made any refund of any portion of the tuition Plaintiff and the members of the Class paid for the Spring 2020 semester for the period it moved to online distance learning.

60. Nor has Adelphi refunded any portion of the Mandatory Fee it collected from Plaintiff and the members of the Class for the Spring 2020 semester even though Defendant closed or ceased operating the services and facilities for which the Mandatory Fee was intended to cover.

61. Plaintiff and the Class are therefore entitled to a pro-rated refund of the tuition and Mandatory Fee they paid Adelphi for the Spring 2020 semester for the

remaining days of that semester after classes moved from in-person to online and facilities were closed.

CLASS ACTION ALLEGATIONS

62. Plaintiff brings this case individually and, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of the class defined as:

All Adelphi University students who satisfied their payment obligations for the Spring Semester 2020 tuition and/or Mandatory Fee and who were enrolled in at least one in-person on-campus class (the “Class”).

63. Specifically excluded from the Class are all students who received full Adelphi-funded scholarships for the Spring 2020 semester, Defendant, Defendant’s officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, joint ventures, or entities controlled by Defendant, and its heirs, successors, assigns, or other persons or entities related to or affiliated with Defendant and/or Defendant’s officers.

64. Subject to additional information obtained through further investigation and discovery, Plaintiff reserves the right to amend, narrow, or expand the class definition.

65. **Numerosity:** The Class is so numerous that joinder of all members is impracticable. Although the precise number of Class members is unknown to Plaintiff, Adelphi reported several thousand students enrolled for the 2019-2020 school year. The names and addresses of all such students are known to Adelphi and

can be identified through Adelphi's records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

66. **Commonality:** There are questions of law and fact common to the members of the Class including, without limitation:

- a. Whether Adelphi accepted money from Plaintiff and the Class members in exchange for the promise to provide an in-person and on-campus educational experience, as well as certain facilities and services throughout the Spring 2020 semester;
- b. Whether Adelphi breached its contracts with Plaintiff and the members of the Class by failing to provide them with an in-person and on-campus educational experience after mid-March 2020;
- c. Whether Adelphi breached its contracts with Plaintiff and the Class by transitioning to remote education, and failing to provide the services and facilities to which the Mandatory Fee pertained after mid-March 2020;
- d. Whether Adelphi was unjustly enriched by retaining a portion of the tuition and Mandatory Fee during the period of time Adelphi

was closed during the Spring 2020 semester, and Plaintiff and the members of the Class were denied an in-person and on-campus educational experience and access to the services and facilities for which tuition and the Mandatory Fee was paid;

- e. Whether Adelphi intentionally interfered with the rights of the Plaintiff and the Class when it moved all in-person classes to a remote online format, cancelled all on-campus events, strongly encouraged students to stay away from campus, and discontinued services for which the Mandatory Fee was intended to pay, all while retaining the tuition and Mandatory Fee paid by Plaintiff and the Class; and
- f. The amount of damages and other relief to be awarded to Plaintiff and the Class members.

67. **Typicality:** Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and the other Class members each contracted with Defendant for it to provide an in-person and on-campus educational experience for the tuition they paid and the services and facilities for the Mandatory Fee that they paid, that Adelphi stopped providing for the remainder for the Spring 2020 semester.

68. **Adequacy of Representation:** Plaintiff is an adequate class representative because his interests do not conflict with the interests of the other

Class members whom he seeks to represent. Plaintiff has retained competent counsel who are experienced in complex class action litigation, and Plaintiff intends to prosecute this action vigorously. Class members' interests will be fairly and adequately protected by Plaintiff and his counsel.

69. **Predominance.** Common questions of law and fact predominate over any questions affecting only individual Class members. Similar or identical violations, business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action. For example, Defendant's liability and the fact of damages is common to Plaintiff and each member of the Class. If Defendant breached its contracts to Plaintiff and Class members, then Plaintiff and each Class member suffered damages by that conduct.

70. **Superiority:** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other Class members is relatively small compared to the burden and expense that would be required to individually litigate their claims against Adelphi, making it impracticable for Class members to individually seek redress for Adelphi's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individual

litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court.

71. **Ascertainability:** Members of the Class are ascertainable. Class membership is defined using objective criteria, and Class members may be readily identified through Defendant's books and records.

FIRST CLAIM FOR RELIEF
BREACH OF IMPLIED CONTRACT
(On Behalf of Plaintiff and the Class)

72. Plaintiff repeats and re-alleges the factual allegations above, as if fully alleged herein.

73. Plaintiff brings this claim individually and on behalf of the members of the Class.

74. When Plaintiff and Class members paid Adelphi tuition and the Mandatory Fee for the Spring 2020 semester, Adelphi agreed to, among other things, provide an in-person and on-campus educational experience as well as the services and facilities to which the Mandatory Fee they paid pertained throughout the entire Spring 2020 semester. As a result, Plaintiff and each member of the Class entered into binding implied contracts with Adelphi.

75. When entering into implied contracts, Plaintiff and Class members reasonably believed and expected that Adelphi would provide them with an on-campus and in-person educational experience, as opposed to remote learning, and use of Defendant's facilities and services for the duration of the entire Spring 2020 semester as mutually agreed and intended in accordance with Defendant's publications, including but not limited to, its marketing materials, course catalogues, and other bulletins, as well as Adelphi's history and prior course of providing in-person and on-campus education.

76. Plaintiff and Class members fully performed their obligations under their implied contracts with Adelphi by registering for classes and paying tuition and the Mandatory Fee.

77. Defendant is in possession of all contracts, materials, circulars, advertisements and the like between Plaintiff and members of the Class on one hand, and Adelphi on the other.

78. Adelphi breached its contracts with Plaintiff and the Class by failing to provide the promised in-person and on-campus educational experience as well as the services and facilities to which the Mandatory Fee pertained throughout the Spring 2020 semester, yet has retained monies paid by Plaintiff and the Class for an on-campus and in-person educational experience and access to these services and

facilities during the entire Spring 2020 semester. Plaintiff and the members of the Class have therefore been denied the benefit of their bargain.

79. Plaintiff and the members of the Class have suffered damages as a direct and proximate result of Adelphi's breach in the amount of the pro-rated portion of the tuition and Mandatory Fee they each paid equal to the reduction in contracted for education and services during the portion of time the Spring 2020 semester when Adelphi discontinued in-person classes and closed campus facilities.

80. Adelphi should return such portions of the tuition and Mandatory Fee to Plaintiff and each Class member.

SECOND CLAIM FOR RELIEF
UNJUST ENRICHMENT
(On Behalf of Plaintiff and the Class)

81. Plaintiff repeats and re-alleges the factual allegations above, as if fully alleged herein.

82. Plaintiff brings this claim individually and on behalf of the members of the Class in the alternative to the First Claim for Relief, to the extent it is determined that Plaintiff and the Class do not have an enforceable contract with Adelphi regarding the relief requested.

83. Plaintiff and members of the Class conferred a benefit on Adelphi in the form of tuition and the Mandatory Fee paid for the Spring 2020 semester. The payment of this tuition and Mandatory Fee was to be in exchange for an in-person,

on-campus educational experience to be provided to Plaintiff and the members of the Class throughout the Spring 2020 semester.

84. Adelphi knowingly accepted the benefits conferred upon it by Plaintiff and Class members.

85. Adelphi has retained the full benefit of the tuition and Mandatory Fee payments made by Plaintiff and the members of the Class for the Spring 2020 semester—without providing the benefits that Plaintiff and Class members were owed.

86. For example, Adelphi failed to provide Plaintiff and Class members access to many on-campus facilities and services after March 10, 2020, yet Adelphi assessed Plaintiff and Class members with tuition and fees that covered the cost of upkeep and maintenance of such facilities and services.

87. Indeed, as a result of closing campus and moving classes online, Adelphi saved significant sums of money in the way of reduced utility costs, reduced staffing requirements, reduced or eliminated hours for hourly employees, reduced or eliminated hours for paid work student students, and otherwise.

88. Upon information and belief, the costs incurred for having an online only program is significantly lower than the overhead needed to provide classes and services on campus.

89. As a result of Adelphi's retention of all the tuition and Mandatory Fee paid by Plaintiff and members of the Class during the period of time Adelphi was closed, Plaintiff and members of the Class were denied an in-person and on-campus educational experience and access and the services and facilities for which the Mandatory Fee were paid. This was unjust and inequitable under the circumstances.

90. Allowing Adelphi to retain the full benefit of tuition and Mandatory Fees paid for in-person on campus education and experiences, after reducing the benefit provided and the costs incurred by Adelphi, unjustly enriched Defendant.

91. Accordingly, Adelphi has been unjustly enriched and should return the prorated portion of the tuition and Mandatory Fee that Plaintiff and Class members each paid equal to the reduction in benefit for education and services during the remainder of the Spring 2020 semester when Adelphi discontinued in-person classes and closed campus facilities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for relief as follows:

(a) For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class and Plaintiff's attorneys as Class Counsel to represent the Class;

- (b) For an order finding in favor of Plaintiff and the Class on all counts asserted herein;
- (c) For compensatory damages in an amount to be determined by the trier of fact;
- (d) For an order of restitution and all other forms of equitable monetary relief;
- (e) Awarding Plaintiff reasonable attorneys' fees, costs, and expenses;
- (f) Awarding pre- and post-judgment interest on any amounts awarded;
- and,
- (g) Awarding such other and further relief as may be just and proper.

DEMAND FOR TRIAL BY JURY

A jury trial is demanded on all claims so triable.

Dated: September 21, 2023

Respectfully submitted,

/s/ Michael A. Tompkins

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Proposed Class*